VALERIE MELLOR
ELIZABETH R. DROZDA

IBLA 80-459, 80-527 Decided August 20, 1980

Appeals from decisions of the New Mexico and Montana State Offices, Bureau of Land Management, rejecting simultaneous oil and gas lease offers NM 39021 and M 45277 (SD).

Decisions suspended, hearing ordered.

1. Contracts: Construction and Operation: Generally--Hearings--Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Applications: Sole Party in Interest--Rules of Practice: Hearings

   A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting multiple filings in simultaneous oil and gas lease filings by a contractual arrangement of a leasing service and its clientele where there are ambiguities in the complex contract between them, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients have given to the terms.

APPEARANCES: James T. Waring, Esq., Kaufman and Waring, P.C., San Diego, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

The simultaneous noncompetitive drawing entry card (DEC) oil and gas lease offer submitted by Valerie Mellor was drawn with the first priority in the November 1979 drawing for parcel MT 97 (serial No. M 45277 (SD)) in the Montana State Office, Bureau of Land Management (BLM). An offer submitted by Elizabeth R. Drozda was drawn with first priority in the November 1979 drawing in the New Mexico State Office, BLM, for parcel NM 21 (serial No. NM 39021).

On December 13, 1979, the BLM Office issued a decision requesting appellant Mellor to complete a "Statement of Oil and Gas Offeror--Simultaneous Drawing" and, if a leasing service was involved that Mellor submit a copy of any contract, agreement, or other pertinent materials. Copies of the investment contract and the offering circular of Eden Capital Corporation, a filing service representing Mellor, together with the completed statement was received by the Montana office December 31, 1979. After a review by the Field Solicitor, the offer to lease was rejected on the ground "that under the Lease Escrow Account, and the Put-Option provision, Eden Capital Corporation stands to directly benefit from the simultaneous drawing." The letter of rejection further stated that as a result of the contract between Mellor and Eden Capital Corporation, the latter had an interest in the lease offer and the lease, if issued, which must have been disclosed as required by 43 CFR 3102.7.

Similarly, BLM requested additional proof regarding appellant Drozda's offer. From the additional evidence provided, BLM deduced that Drozda had entered into an agreement with Eden Capital Corporation on September 27, 1978, and that the agreement incorporated by reference an offering memorandum, which stated in part that:

> When the client sells a lease acquired during his participation in the program, the proceeds from the sale of the lease will also be deposited into the Lease Sales Escrow Account. * * * If the client disposes of his interest in a lease in any manner other than by sale 49% of any consideration received by the client shall be assigned to Eden.

BLM concluded that: "From the offering memorandum we have established that Eden Capital Corporation has an interest in each client's lease whether or not the "put-option" is exercised. Eden Capital Corporation has overall control of all correspondence received from the sale of the leases." By decision dated February 28, 1980, BLM decided that since Eden Capital Corporation was to participate in the proceeds

derived from appellants' leases, if issued, compliance with 43 CFR 3102.7 was mandatory. 1/ Because the same issues are involved in each appeal and the statements of reasons are similar, these appeals have been consolidated.

On appeal to this Board appellants assert that:

> The Put Option as provided for in the Eden program is an election, exercisable solely by the subscriber, to sell to Eden, for the sum of $5500, an undivided 49% interest in any lease acquired by the client. The key element of the Put Option is that the client has the total control and discretion to decide whether or not to exercise the option.

Secondly, appellants contend that the Eden Capital Corporation memorandum which is incorporated into the clients' agreements with the Corporation shows that Eden Capital Corporation has no claim to any interest in the leases unless the client elects to exercise the "Put Option."

The basic issues in these cases are whether the agreement between Eden and its clients, as understood and implemented by them, creates an interest in Eden in the offers which was not disclosed when the offers were filed, and whether there were multiple filings forbidden by the regulations. The agreement in these cases is reflected by the specific investment contract between Eden and each of its clients involved in these two appeals, together with Eden's "Offering Memorandum," which is its advertising brochure or prospectus, setting forth the conditions, procedures, and terms of its arrangements with its clients. Among other provisions, the "memorandum" allows the client who subscribes to specific lease service filing programs with Eden to sell to Eden, for the sum of $5,500, an undivided 49 percent interest "in all leases acquired during the term of the program" (Memorandum, p. 7).

The issues presented by these appeals were first addressed by the Board in the consolidated appeals of Harry S. Hills and Kenneth E. Roth, 48 IBLA 356 (1980), wherein it was concluded that the Eden

1/ Regulation 43 CFR 3102.7 states in part that if there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statements and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer.

agreement, given the nature of the put-option, the time which it could be exercised, and the escrow accounting method employed, was too ambiguous to determine whether Eden had an interest in the offers as defined by 43 CFR 3100.0-5(b). 2/ Because of these ambiguities, we were unable to find with certainty that Eden did not have an interest, as defined by the regulations, and therefore ordered, inter alia, a fact-finding hearing pursuant to 43 CFR 4.415 before an Administrative Law Judge for purposes of rendering a recommended decision to the Board. The Board expressly requested a factual inquiry into how Eden operated its Lease Sales Escrow Account (LSEA) and posed various questions for the Administrative Law Judge's consideration of the issues. Id. at 363.

Because the issues raised in the instant appeals are similar to those in Hills-Roth, a hearing is warranted in these proceedings with the same questions to be addressed as we ordered in Hills-Roth. The decisions below will be suspended pending the ultimate determination by this Board after the hearing, and the appellants will have the burden of proof to show that the contractual arrangement with Eden does not constitute a violation of the regulations. We recommend that the hearing be consolidated with that ordered in Hills-Roth, if the Administrative Law Judge assigned to the case finds it appropriate, considering the circumstances of the parties involved.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are referred to the Hearings Division of this Department in accordance with this decision.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

2/ As defined by 43 CFR 3100.0-5(b), an "interest" includes any "claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from the leases based upon or pursuant to any agreement or understanding existing at the time when the offer is filed."